

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WESTERN WATERSHEDS PROJECT,

Plaintiff,

v.

BUREAU OF LAND MANAGEMENT AND
U.S. FISH AND WILDLIFE SERVICE,

Defendants.

3:06-cv-00527-LRH-RAM

ORDER

Presently before the court is plaintiff Western Watersheds Project's ("WWP") motion for attorney's fees filed December 9, 2008. Doc. #77¹. Defendants, the United States Department of the Interior's Bureau of Land Management ("BLM") and the United States Fish and Wildlife Service ("FWS"), filed an opposition on January 9, 2009. Doc. #83. On January 23, 2009, WWP filed its reply. Doc. #84.

I. Facts and Procedural History

In October 2003, BLM determined that two resource management plans ("RMPs") governing the management of 7.5 million acres of public land near Elko, Nevada did not provide adequate fire management for the area. *See* Doc. #64. BLM amended its RMPs and drafted environmental assessments ("EA") of the environmental impact surrounding the amendments. *Id.*

¹ Refers to the court's docket entry number.

1 The amended policies, the 2004 Elko and Wells Resource Management Plans Management
2 Amendment (“Elko”) and the 2005 Spruce Mountain Restoration Project (“Spruce Mountain”),
3 provided for numerous pro-active vegetation treatments including burning, chaining, logging and
4 other eradication methods of substantial undergrowth across more than 18,000 acres. *See* Doc. #77.

5 On October 4, 2006, WWP filed a complaint for injunctive relief alleging that BLM and
6 FWS violated the National Environmental Policy Act (“NEPA”) by failing to allow public review
7 and comment on the amended RMPs and draft EAs. Doc. #1. WWP alleged three separate causes
8 of action: (1) violation of NEPA in drafting the Elko amendment; (2) violation of the
9 Environmental Species Act (“ESA”) in drafting the Elko amendment; and (3) violation of NEPA in
10 drafting the Spruce Mountain amendment. Doc. #1. WWP subsequently moved for a preliminary
11 injunction to prevent BLM from executing on the Spruce Mountain amended RMP. Doc. #6.

12 On October 20, 2006, this court granted WWP’s preliminary injunction finding that “BLM
13 did not give the public an opportunity to comment on the draft [environmental assessment] prior to
14 issuing its final decision” as required by NEPA regulations. Doc. #14.

15 WWP’s claims regarding the Elko amended RMP were ultimately dismissed on April 18,
16 2008, when this court granted BLM’s cross-motion for summary judgment (Doc. #55) and denied
17 WWP’s partial motion for summary judgment (Doc. #44). Doc. #64.

18 Subsequently, WWP voluntarily dismissed the remaining claim concerning Spruce
19 Mountain because the BLM postponed the project, withdrew the challenged EA, and stated it
20 would prepare a new EA if the amended plan was to move forward at a later date. Doc. ##71, 75.
21 Final judgment was entered on November 7, 2008. Doc. #76.

22 WWP now seeks attorney’s fees pursuant to 28 U.S.C. § 2412. Doc. #77.

23 **II. Discussion**

24 The Equal Access to Justice Act (“EAJA”) authorizes the payment of fees and costs to a
25 prevailing party in an action against the United States. 28 U.S.C. § 2412. Specifically, “a court shall
26

1 award to a prevailing party other than the United States fees and other expenses...incurred by that
2 party in a civil action, including proceedings for judicial review of agency action, brought by or
3 against the United States in any court having jurisdiction of that action.” 28 U.S.C. §
4 2412(d)(1)(A). Such fees shall be awarded “unless the court finds that the position of the United
5 States was substantially justified or that special circumstances make an award unjust.” *Id.*

6 A motion for attorney’s fees and costs pursuant to § 2412(d)(1)(A) must be filed within
7 thirty (30) days after final judgment and include: (1) a showing that the applicant is a prevailing
8 party; (2) that it is financially eligible under § 2412(d)(2)(b) to receive an award of fees and costs;
9 (3) an itemized accounting of fees sought; and (4) an allegation that the government’s position was
10 not substantially justified. *See* 28 U.S.C. § 2412(d)(1)(B); *Scarborough v. Principi*, 541 U.S. 401,
11 408 (2004).

12 Here, WWP’s motion for fees is untimely and must be denied. “An application for attorney
13 fees under 28 U.S.C. § 2412(d) is timely only if the applicant files no more than 30 days after final
14 judgment.” *Auke Bay Concerned Citizen’s Advisory Council v. Marsh*, 779 F.2d 1391, 1393 (9th
15 Cir. 1986). Final judgment was entered on November 7, 2008, (Doc. #76) and the present motion
16 was not filed until December 9, 2008, thirty-two (32) days later (Doc. #77).

17 Section 2412(d)(1)(B) “establishes a clear date *after which* application for attorney fees
18 must be rejected as untimely.” *Auke Bay*, 779 F.2d at 1393 (emphasis in original). This deadline is
19 strictly interpreted and enforced. *See e.g., Arulampalam v. Gonzalez*, 399 F.3d 1087, 1099 (9th Cir.
20 2005) (denying a motion for attorney’s fees that was mailed to the court on the thirtieth day but
21 filed a few days later); *Al-Harbi v. INS*, 284 F.3d 1080, 1082 (9th Cir. 2002) (holding that
22 applications under the EAJA must be filed “within [thirty] days of final judgment”); *Columbia Mfg.*
23 *Corp. v. NLRB*, 715 F.2d 1409, 1410 (9th Cir. 1983) (denying a fees application filed thirty-three
24 days after final disposition). Accordingly, WWP’s motion is untimely under 28 U.S.C. §
25 2412(d)(1)(B).
26

1 IT IS THEREFORE ORDERED that Western Watersheds Project's motion for attorney's
2 fees (Doc. #77) is DENIED.

3 IT IS SO ORDERED.

4 DATED this 25th day of August, 2009.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE